

1 LIONEL SAWYER & COLLINS  
2 Samuel S. Lionel, Bar #1766  
3 Maximiliano D. Couvillier III, Bar #7661  
4 300 So. Fourth St. #1700  
5 Las Vegas, Nevada 89101  
6 Phone: 702/383-8884; fax: 383-8845  
7 slionel@lionelsawyer.com  
8 mcouvillier@lionelsawyer.com

5 MILLER KORZENIK SOMMERS LLP  
6 David S. Korzenik  
7 488 Madison Ave. #1120  
8 New York, New York 10022-5702  
Phone: (212) 752-9200  
dkorzenik@mkslex.com

9 LEOPOLD, PETRICH & SMITH, P.C.  
10 Daniel M. Mayeda  
11 2049 Century Park East, Suite 3110  
Los Angeles, California 90067-3274  
Phone: (310) 277-3333; fax (310) 277-7444  
dmayeda@lpsla.com

12 Attorneys for Defendants Frankie Valli, Robert  
13 J. Gaudio, Marshall Brickman, Eric S. Elice aka  
14 Rick Elice, Des McAnuff, DSHT, Inc.,  
Dodger Theatricals, Ltd. and JB Viva Vegas, LP

15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF NEVADA**

17 DONNA CORBELLO,

Case No. 2:08-cv-867-RCJ-PAL

18 Plaintiff

**NEW DEFENDANTS'  
MOTION TO SEAL EXHIBIT 1 IN  
SUPPORT OF THEIR SUR-REPLY TO  
PLAINTIFF'S "EMERGENCY"  
OBJECTION TO MAGISTRATE  
JUDGE'S APRIL 15, 2011, ORDERS**

19 v.

20 THOMAS GAETANO DEVITO et al.,

21 Defendants.

22 Pursuant to the *Stipulated Protective Order* (Doc. 94) and the Court's *Order Regarding*  
23 *Sealing Requirements* (Doc. 95), New Defendants Frankie Valli, Robert J. Gaudio, Marshall  
24 Brickman, Eric S. Elice, Des McAnuff, DSHT, Inc., Dodger Theatricals, Ltd. and JB Viva Vegas  
25 request leave to file certain documents under seal as Exhibit 1 to their Sur-Reply in response to  
26 Plaintiff's "Emergency" Objection to Magistrate Judge's April 15, 2011, Order (Dkt. #533).

27 //

1

**POINTS & AUTHORITIES**

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Pursuant to the *Stipulated Protective Order* (Doc. 94) and the Court's *Order Regarding Sealing Requirements* (Doc. 95), New Defendants seek to file the following documents under seal as Exhibit 1 to their Sur-Reply in response to Plaintiff's "Emergency" Objection to Magistrate Judge's April 15, 2011, Order:

- 1) Spreadsheet regarding confidential and sensitive financial information.

As mentioned, the proposed sealed documents are being filed in connection with non-dispositive discovery motions. "The public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9<sup>th</sup> Cir. 2006)(quoting *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)). Indeed, the Ninth Circuit has "carved out an exception to the presumption of access to judicial records ... for a sealed discovery document [attached] to a non-dispositive motion, such that the usual presumption of the public's right of access is rebutted." *Kamakana*, 447 F.3d at 1179 (*internal quotations and citations omitted*).

Because the proposed documents are being filed in connection with non-dispositive motions, they fall within the exception carved out by the Ninth Circuit and leave to file them under seal should be granted. Moreover, there is good cause to seal the proposed financial documents because they are being filed pursuant to the *Order Regarding Sealing Requirements* (Doc. 95). "[W]hen a district court grants a protective order to seal documents during discovery, it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality." *Kamakana*, 447 F.3d at 1179-1180 (quoting *Philips*, 307 F.3d at 1213).

1 There is additional good cause to file these two documents under seal because they  
2 contain sensitive and proprietary financial information.

3 **CONCLUSION**

4 Based upon the foregoing, New Defendants request should be granted.  
5

6 LIONEL SAWYER & COLLINS  
7 MILLER KORZENIK SOMMERS LLP  
LEOPOLD, PETRICH & SMITH, P.C.

8 By: S/ David S. Korzenik  
9 Samuel S. Lionel, Bar 1766  
10 Maximiliano D. Couvillier III, Bar 7661  
Daniel Mayeda (Pro Hac Vice)  
11 David S. Korzenik (Pro Hac Vice)

12 Attorneys for Defendants Frankie Valli, Robert  
J. Gaudio, Marshall Brickman, Eric S. Elice aka  
13 Rick Elice, Des McAnuff, DSHT, Inc.,  
Dodger Theatricals, Ltd. and JB Viva Vegas, LP  
14

15 IT IS SO ORDERED  
16

17 \_\_\_\_\_  
18 UNITED STATES MAGISTRATE JUDGE  
19 Dated: June 3, 2011  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **Certificate of Service**

I certify that on June 2, 2011, I electronically filed the foregoing  
**NEW DEFENDANTS' MOTION TO SEAL EXHIBIT 1 IN SUPPORT OF THEIR SUR-**  
**REPLY TO PLAINTIFF'S "EMERGENCY" OBJECTION TO MAGISTRATE JUDGE'S**  
**APRIL 15, 2011, ORDERS** and this certificate of service with the clerk of the Court using the  
ECF system which will send notification of such filing to the following:

John L. Krieger, Bar #6023  
George L. Paul (*Pro Hac Vice*)  
LEWIS & ROCA  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
[JKrieger@lrlaw.com](mailto:JKrieger@lrlaw.com)  
[Gpaul@lrlaw.com](mailto:Gpaul@lrlaw.com)

Gregory H. Guillot (*Pro Hac Vice*)  
**GREGORY H. GUILLOT, PC**  
13455 Noel Road, Suite 1000  
Dallas, Texas 75240  
ggmark@radix.net

Attorneys for Plaintiff

L. Bradley Hancock (*Pro Hac Vice*)  
Booker T. Evans, Bar #1209  
Alma Chao, Bar #10538  
**GREENBERG, TRAURIG, LLP**  
3773 Howard Hughes Parkway, Suite 500 North  
Las Vegas, Nevada 89169  
[evansb@gtlaw.com](mailto:evansb@gtlaw.com)  
[chaoa@gtlaw.com](mailto:chaoa@gtlaw.com)

Attorneys for Defendant Thomas Gaetano DeVito

S/Maximiliano D. Couvillier III  
An employee of Lionel Sawyer & Collins